Decision for dispute CAC-UDRP-103302

Case number	CAC-UDRP-103302
Time of filing	2020-10-02 08:58:52
Domain names	mym.fan

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	AIR MEDIAS

Complainant representative

Organization	EPSILON AVOCATS

Respondent

Name	Jurgen NEEME

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the French trademark “MYM” No. 4523099, registered on February 7, 2019 for goods and services in classes 35 and 45.

The disputed domain name was registered by the Respondent on April 29, 2020.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant states that it is a French company, based in Lyon.

The Complainant submits that it is active in the field of internet services and operates the private social network “MEET YOUR MODEL” (“MYM”).

The Complainant clarifies that MYM is a social network for public figures and models to share content with their fans against a monthly membership fee.

The Complainant adds that so far, 55 000 models have registered on MYM.

The Complainant states that it is the owner of the French trademark “MYM” No. 4523099, registered on February 7, 2019.

The Complainant underlines that it owns the domain name <mym.fans>, registered on August 30, 2018, and that it uses it to operate the social network MYM.

The Complainant argues that it has discovered that the Respondent registered the disputed domain name on April 29, 2020.

The Complainant notes that, according to a WHOIS query of the disputed domain name, the Respondent is located in Estonia.

The Complainant observes that the disputed domain name is pointing to a website displaying a page which provides pay-per-click links and commercial advertisements in French language.

The Complainant argues that the disputed domain name is identical to the earlier “MYM” trademark No. 4523099 in its entirety.

The Complainant contends that the disputed domain name incorporates the entirety of its trademark by reproducing the three letter “m”, “y” and “m” with the same sequence, and that therefore it is identical to the registered trademark “MYM”.

The Complainant considers that the top-level domain “.fan” may not be taken into consideration when examining the identity or similarity between the Complainant’s trademark and the disputed domain name, as it is a technical requirement of registration.

The Complainant asserts that it registered the domain name <mym.fans> on August 30, 2018 and that it has been actively using it since then.

The Complainant notes that under French law, the registration of a domain name identical to an earlier domain name can constitute an act of unfair competition.

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name, since he is not related in any way with the Complainant.

The Complainant states that it has not licensed or otherwise permitted the Respondent to use its “MYM” trademark or earlier domain name.

The Complainant submits that there is no indication that the disputed domain name owner is commonly known by the term “MYM” or that he is using the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant notes that there is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

The Complainant considers that it is clear that using the disputed domain name to host a website displaying a page which provides pay-per-click links and commercial advertisements does not present a bona fide offering of goods or services where such links mislead Internet users.

The Complainant adds that the Respondent is a well-known cybersquatter who has been involved in many previous UDRP proceedings including:

- WIPO Case No. D2018-1125.

- WIPO Case No. D2019-1582;

- WIPO Case No. D2019-2779;

- WIPO Case No. D2020-0403;

- WIPO Case No. DWS2020-0002;

- WIPO Case No. D2020-0137.

The Complainant infers from the above-mentioned facts that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant argues that it is clear that the Respondent was fully aware of the Complainant, its “MYM” trademark and the domain name <mym.fans> when registering the disputed domain name.

The Complainant adds that the “MYM” trademark is highly distinctive and that if the Respondent had carried out a Google search for the word “MYM”, the search results would have yielded immediate and obvious references to the Complainant.

The Complainant submits that it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be identical with the Complainant’s trademark, and that the Respondent registered the disputed domain name in full knowledge of this trademark.

The Complainant considers that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website:

- by creating a likelihood of confusion with the Complainant's trademark “MYM” and domain name <mym.fans>;

- by relying on typos mistakes made by Internet users when inputting the website address <mym.fans> into a browser.

The Complainant adds that the Respondent has registered many domain names containing registered trademarks of third parties.

The Complainant concludes that such circumstances are evidence of registration and use of the disputed domain name in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being

used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "MYM", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark only by the addition of the top-level domain ".fan".

It is well established that merely adding a top-level domain to a trademark is not sufficient to distinguish a domain name from a trademark (see, for example, CAC Case No. 100831).

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”.

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- the Respondent is not related in any way with the Complainant;

- the Complainant has not licensed or otherwise permitted the Respondent to use its trademark or earlier domain name;

- there is no evidence that the Respondent is commonly known by the disputed domain name;

- there is no evidence that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services;

- there is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name;

- the disputed domain name is used for hosting a website displaying a page with affiliate links and commercial advertisements; and

- the Respondent was involved as respondent in other UDRP procedures where the relevant domain names were transferred to the relevant complainants.

Taking into account the fact that, based on the information of the Whois database, the Respondent is not commonly known by the disputed domain name, that no relationship exists between the Complainant and the Respondent, that no use of the disputed domain name in connection with a bona fide offering of goods or services was demonstrated, that no legitimate non-commercial or fair use of the disputed domain name was demonstrated, that the disputed domain name is used in a website containing commercial advertisements and affiliated links, and that the Respondent has engaged in a pattern of trademark-abusive domain name registrations, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

Taking into account the distinctiveness of the trademark “MYM”, and the existence of the Complainant's domain name used in the website <mym.fans>, the Panel agrees that it is very difficult to conceive that the Respondent was not aware of the Complainant's rights in the Complainant's trademark when registering the disputed domain name. Indeed, if the Respondent had carried out a search on the most common search engines, he would have found references to the Complainant.

Other panels considered that knowledge of a corresponding mark at the time of the domain name’s registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100). The Panel shares this view.

The Panel agrees also that directing Internet users to a web page containing commercial links, like in the present case, is evidence of use in bad faith (see, for example, WIPO case No. D2017-0890).

Moreover, other panels considered typosquatting as evidence of bad faith (see, for example, WIPO Case No. D2004-1039). The Panel notes that the disputed domain name only differs from the Complainant's domain name <mym.fans> by one letter, and shares this view.

A further evidence of bad faith is given by the fact that the Respondent registered other domain names containing well-known trademarks, thus being engaged in a pattern of abusive conduct.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a Response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the Complainant's distinctive trademark "MYM" at the time of the disputed domain name registration, that the Respondent registered other domain names containing well-known trademarks, that no response to the complaint has been filed and the use of the disputed domain name - which constitutes a

misspelled version of the Complainant's domain name <mym.fans> - in a website containing commercial links, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MYM.FAN**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2020-11-12

Publish the Decision